

RE: A request for an interpretation of BPC sections 6731(e) and 6734 in re engineering reports prepared as part of the BID formation process

From: Moore, Ric@DCA <Ric.Moore@dca.ca.gov>
To: [REDACTED]
Cc: emathieson@exponent.com, Criswell, Tiffany@DCA <Tiffany.Criswell@dca.ca.gov>
Subject: RE: A request for an interpretation of BPC sections 6731(e) and 6734 in re engineering reports prepared as part of the BID formation process
Date: Monday, April 16, 2018 1:16 PM
X-Delivered-To: [REDACTED]
Size: 83 KB

With all due respect, I believe there is a misunderstanding in this correspondence related to what is a "policy" and what is a decision or findings related to an investigation. Ms. Lowe's response is related to that specific investigation based on facts discovered related to that submitted complaint. Ms. Criswell's statements are related to your inquiry on this and represents recollection on the part of long time staff as to whether this issue arose in the past. In either instance, if the information was part of an enforcement investigation, any reference to this topic would be based solely on the specific facts of that specific investigation and not a general policy. Likewise, if an outside, independent licensed expert was tasked with providing a report on the technical aspects related to a complaint and investigation, and which this topic was part of the investigation, that expert's report would be based solely on the specific facts of that specific investigation and not a general policy. The expert's opinions in these matters are precedential in nature and cannot be considered as a policy decision related to the general topic. There has only been one occurrence when the Board established a precedential decision that I am aware of and that requires action by the Board at a meeting. This can be found at http://www.bpelsg.ca.gov/pubs/precedent_decisions_list.shtml

Sometimes, the Board receives letters of inquiry where questions are asked related to whether some action is considered as the practice which would require a license. The Board will research the issue and respond accordingly to the actual questions that were asked, nothing more, nothing less with a caveat that should other facts or information relative to the inquiry subsequently become known to the Board, the response may change. These types of inquiries/responses are likely more general in nature, but still are considered as a "policy" of the Board nor precedential. I cannot recall any inquiries related to your topic in the 11 years I've worked at the Board.

The simple fact is that if the Board wants to rely upon some decision, belief, stance, opinion, etc. as to how interpretations of the law related to regulated practice is to be dealt with in an overriding sense, the Board is required to implement either legislation or regulation through the proper processes in order to do so. So at this point, I will differ with your position that there is an "unwritten policy" by the Board and it is yet to be determined that a "genuine ambiguity in the law" is in fact present related to this topic.

I can assure you that all complaints are read and the factual allegations are responded to accordingly. If the person on the record as submitting the complaint does not believe that is the case, that person can always ask me for additional clarification and I will see that the concerns are addressed. Regardless of who submitted the complaint on the record (licensed individual or otherwise), if an expert opinion was deemed necessary, that would be provided by an outside independent expert such that the Board could rely upon it in consideration as to what disciplinary action needs to be taken or not taken. The allegations provided by the complaining party are just that...allegations...and cannot be solely relied upon as an unbiased independent expert opinion.

Our Board has chosen to not implement teleconferencing of their Board meetings at this time unless it is deemed necessary to address something due to emergency timing. Each teleconferencing location would need to be setup for the public as if it was the primary location.

Ric Moore

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From: [REDACTED]
Sent: Monday, April 16, 2018 10:24 AM
To: Moore, Ric@DCA <Ric.Moore@dca.ca.gov>